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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,144	12/12/2003	Michael J. Shebek	APC-P0002	1570
27268 7590 02/20/2007 BAKER & DANIELS LLP 300 NORTH MERIDIAN STREET SUITE 2700 INDIANAPOLIS, IN 46204			EXAMINER FETSUGA, ROBERT M	
			ART UNIT 3751	PAPER NUMBER

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GROUP 3700

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/735,144
Filing Date: December 12, 2003
Appellant(s): SHEBEK, MICHAEL J.

MAILED
FEB 20 2007
GROUP 3700

Kevin R. Erdman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 20, 2006
appealing from the Office action mailed July 03, 2006.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct, however, it is noted withdrawn claims 18 and 19 are considered "pending".

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. Grounds I, as listed on page 5 of the brief, is

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hereby withdrawn in light of the Rule 132 declaration filed

December 09, 2005.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,496,990

Last

12/2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-17 are rejected under 35 U.S.C. 102(a/e) as being anticipated by Last '990.

The Last '990 reference discloses a track and coping assembly comprising: a coping 26 including a slot having an opening 42, an inner wall 31, an opposite inner wall 33, and a tab 32; a reversible track 11 including a first channel 16 having a first opening 17, a second channel 19 having a second opening 21, and two locking ledges 13; an insert wedge 34; a pulley 23; and a pulley housing 36, as claimed. Re claims 1 and 12, the openings 17,21 in Last are "adapted to receive" different rope/slider arrangements as discussed at column 5, lines 33-42, therein. Furthermore, these statements of intended

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use do not appear to impose any patentably distinguishing structure of the claimed assembly over that disclosed by Last.

(10) Response to Argument

Appellant argues at page 10 of the brief claims 1 and 12 each require channel openings of different configurations. The examiner can not agree as the term "different/differing" is not recited in either of claims 1 or 12 (or any claim for that matter). Appellant argues at pages 10-11 of the brief the structure of different/differing channel openings should be imported into claims 1 and 12 based upon the corresponding description in the instant application. The examiner can not agree as a patent disclosure should only be used to inform the meaning of claim terms, rather than to inject unclaimed substance therein. It is again noted the term "different/differing" is not recited in either of claims 1 or 12. Further in this regard, appellant's disclosure gives no special meaning to the contested claim term(s). In fact, paragraph 0052 in the instant specification contemplates using the disclosed track and coping assembly with swimming pool cover systems which differ from that represented in the attendant drawing figures. Appellant's remaining arguments at pages 11-14 of the brief have been considered, but are deemed unpersuasive. The issue to be resolved in this appeal is whether the

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functional language "adapted to receive a first rope arrangement" (and likewise "adapted to receive a second rope arrangement") defines structure of the claimed track and coping assembly that is distinguished from the structure of the track and coping assembly disclosed by Last. The examiner can not distinguish appellant's claims from the Last disclosure.

Initially, it is noted the contested functional language is so broad as to literally encompass a reversible track having identical channel opening structures, like those illustrated in Last. This is because Last explicitly discloses such at lines 33-42 in column 5 where he teaches an opening 17 for receiving an edge of a pool cover, and an opening 21 for receiving cabling. The pool cover edge and cabling are certainly different "configurations" even though the channel openings 17,21 may be substantially identically structured. In any event, Last also teaches that different cross-sectional configurations of the track and coping assembly can be utilized when different swimming pool cover systems are used therewith. Note column 12, lines 42-53, in Last.

(11) Evidence Appendix

Appellant has properly identified the declaration of Bruce Holmes in the evidence appendix.

(12) Related Proceedings Appendix

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No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Robert M. Fetsuga

Conferees:

esk 

glh 